

BOARD OF ZONING APPEALS

Minutes April 24, 2001

The regular meeting of the Board of Zoning Appeals of the City of Wichita, Kansas, was held at 1:30 p.m., on April 24, 2001, in the Planning Department Conference Room, Tenth Floor of City Hall, 455 N. Main, Wichita, Kansas.

The following Board members were in attendance: JOHN ROGERS, MARY DESENA, RANDY PHILLIPS, FLOYD PITTS, and JAMES RUANE. The following Board members were absent: BRADLEY TIDEMANN, JAMES SKELTON.

The following Planning Department staff members were present: DALE MILLER, Secretary, SCOTT KNEBEL Assistant Secretary, Recording Secretary, ROSE M. SIMMERING.

Also present: SHARON DICKGRAFE -- Assistant City Attorney.

Also present: J.R.COX – Commercial Plan Review/Commercial Zoning -- Office of Central Inspection.

PITTS: I am going to ask the Secretary to call the role, please.

SIMMERING: Completes role call.

PITTS: We do have a quorum. The first item on the Agenda is the approval of the meeting minutes of the February 27, 2001 and March 27, 2001. I have on February 27, 2001 those minutes the approval was deferred because there was some ambiguity of the remarks of one Commissioner was attributed to another. But, those corrections have been made and the Chair is open for approval of February 27, 2001 and March 27, 2001 minutes if you have an opportunity to review those.

RUANE: I have some corrections on March 27, 2001 minutes.

PITTS: Alright, why don't we take these one at a time then. So let's entertain a motion for approval of February 27, 2001.

ROGER moves PITTS seconds to the approval the meeting minutes of February 27, 2001.

MOTION CARRIES 5-0.

PITTS: Alright, you had some questions on March 27, 2001?

RUANE: Regarding the March 27th minutes I have a few corrections that I would like to make.

RUANE: On page 6 of those minutes, on the top third of the page, the comments attributed to me, in the second line, I will just read the sentence as I think it should be. "I think for a point of clarity, the applicant has requested that we defer this for 60-days to allow (rather than all) a survey etc. to be obtained.

Then dropping down a line the comment sentence beginning with "Because I don't know, but procedurally I think that we should at least recognize that as the first issue to be addressed if somebody wants to make a motion to that affect. (I think it is effect with an "e" there). That is all on page 6.

Then on page 9, I have two changes that I would request. In the conclusion of my first remarks on that page in the top third of the page. I will read from the phrase, "I want you to know that that's out there and that in that there are only four of us present today it does not seem to allow for an abstention."

Then dropping down to the next comments of mine, the last three words, "makes me unbiased" rather than "make be unbiased".

PITTS: Excuse me, what page are you on?

RUANE: Page 9. Any questions? Did I go too quickly on that?

SIMMERING: No.

PITTS: Are there any other corrections or additions? Did you get those corrections Rose?

SIMMERING: Yes, I did.

RUANE moves ROGERS seconds with those corrections I would move approval.

MOTION CARRIES 5-0.

PITTS: Item number 2, case number BZA 2001-0009, request of zoning interpretation of the Zoning Administrator, staff.

MILLER: As you know Board members this is an Appeal of an Administrative interpretation of the Code. Your responsibility in this is to review the material that was sent to you in the Agenda packet and to hear the testimony today to determine whether or not in your opinion the interpretation that was rendered by the Director of Central Inspection regarding this particular type of use is consistent with the way you understand the Code to be written.

Then make a decision we have three choices, as I understand it, you can either concur and support the opinion as rendered, you can determine that the opinion is not correct, or you can modify that opinion. So with that you would probably want to hear from the representative for the Superintendent of Central Inspection first I believe. Sharon?

DICKGRAFE: I think that the parties may want to make some kind of opening remarks or statements to the Board as to how they want to proceed today before we start with the evidence. I have been notified that there maybe some changes as to whether or not this issue is even going to go before the Board today. I don't know if the applicant wants to start at this point and then perhaps the representative from Community Solutions.

ELIZABETH BISHOP, 8518 Longlake Street: What I would like to tell you just very briefly is a little bit about the context of what brings us here today. This won't take long and you may find that some of it is not totally 100 percent germane to the issue but at the end of approximately two minutes I will make a brief request.

It is appropriate that we are addressing this, this week, because April 22nd was the start of Crime Victims Week. And in a sense we are all Victims of crime because we are required to expend a considerable amount of public and private resources on addressing the problem of crime.

A year ago the Kansas Legislature passed Senate Bill 323 also known as the Corrections Mega Bill. That did two main things that concern us today. Number one, it greatly reduced the length of parole time and thereby reduced the number of people on parole. In looking at the statistics from the Department of Corrections, the number of people in the State Of Kansas on parole today has been reduced by approximately 31 percent. At the same time it established plans for three, Day Reporting Centers one in Kansas City, to serve 60 individuals, one in Topeka to serve 40 individuals and one in Wichita to serve 120 individuals. This service is to be done via a contract from the Department of Corrections using federal money and to be provided by a private contractor.

I might tell you that I serve on the Community Corrections Advisory Board and one of the things that I have learned from that service is that the parole population that is out there today tends to be more trouble prone. They tend to have more substance abuse problems, more mental health problems. So, what this means today for us as citizens is that we have a slightly more trouble prone parole population and a shorter amount of time to deal with them. That is one of the reasons for the creation of the Day Reporting Center concept along with the fact that it was a desire to not have to build more prisons because our prisons have been running at somewhere between 93 and 95 percent of being full. Which in essence is full.

Then we have the local story and I am going to go into a very brief rant here and you will please forgive me, please indulge me. A few months ago the Wichita City Council chose to disband the Alternative Correction Housing Board. A Board I served on the task force that created the Alternative Correctional Housing process to licensed halfway houses in the community serving Paroles and Probationers. That process was allowed to lapse and then languish for several months when the Day Reporting Center suddenly was on the Agenda the City then had to then quickly re-establish the Alternative Correctional Housing Board with many different people on it, get them oriented, and get them prepared to begin to deal with the case.

My point is that the Alternative Correctional Housing Board as it previously existed was ready, willing and able to deal with both proactively and forthrightly with the issue of Day Reporting Centers in Wichita, but it was not allowed to do so. But, rant over, that is history, and that is water under the bridge. Where are we today? Where we are is that we need a better process for dealing with this entire issue one that brings together all different elements of the problem the State, the City, and the local communities and the neighborhoods that are likely to be impacted by it. This is a serious social issue, one that we all need to be more aware of and more prepared to deal with and in a way that does not overly burden anyone neighborhood. Because currently there are several other bodies that are working on this issue including the Metropolitan Area Planning Commission with some new proposed zoning regulations and definitions. The Wichita City Council, the State Legislature and the newly configured Alternative Correctional Housing Board which is looking at licenser issues.

We formally request a deferral of this case, at this time for 60 days. I will stand for any questions.

PITTS: Thank you very much, for your presentation, is there any questions for Mrs. Bishop from the bench? Thank you. Is there any other person from the Appellants group to appear before the group? Please approach the microphone and give your identity.

RICHARD RUMSEY, 2308 Hyacinth, Wichita, KS 67204, also an Attorney, Richard Rumsey 1041 Waco, Wichita, KS 67203: Which is in the general area of this proposed Day Reporting Center. I certainly don't have a big argument to make, if in fact a continuance is going to be granted. I think you have seen the Appellants arguments at least set out in part in the application for Appeal that was filed with this Body and the written statement that was attached to it in accordance with the City Code. That is certainly our argument and we could certainly elaborate on it but I don't want to entice any further fires if we don't have to and if the matter is going to be continued as I think the lien holder at least wants it continued and I think they have an announcement that might be beneficial for at least the Twin Lakes area and yet preserve some of the issues that have been raised by the Zoning Administrator in his report.

PITTS: Thank you very much. Legal, should we listen to anything from the Superintendents office before we make any type of decision on the deferment since this came from the Appellant?

DICKGRAFE: Certainly the Superintendent has a right to make a statement to the Board. But, I think for the record purposes and for the Boards information that it would be appropriate for a representative from Community Solutions to make a statement, which my understanding is a large part of why the request to defer is being made by the Appellant. So, I think if Mr. Docking wants to go ahead and make a statement to the Board, he is representing Community Solutions.

TOM DOCKING, 200 W. Douglas, 4th Floor, Suite 400, Wichita, KS 67202: I am with the Morris Lange Law Firm representing Community Solutions which is the company that has the contract with the Kansas Department of Corrections for the provision of the Day Reporting Center services that we have here before us sought to provide out of Twin Lakes Shopping Center at 21st Street and Amidon.

I learned after considerable discussion of the matter on Friday, from the Company's representative out of their Topeka office, that in light of the controversial circumstances and factors that affect or will affect the neighborhood at Twin Lakes if this facility does in fact go into that property that the company wishes to withdraw any consideration of the Twin Lakes site. And the company will be seeking, although I am not authorized to do so yet we will seek to have the application for building permit that is on file that would authorize the provision of the services at the facility to be withdrawn.

It is my belief after consulting with the City Attorney's staff on this matter that may remove the basis for which the Appeal in this case was filed and render the matter moot for the time being.

In terms of the larger context and I will just take a moment or two in that regard. We have received multiple communications from people at the City, both from the City Council and from Legal staff and from Planning and Economic Development that it is very much in the City's interest to work with Community Solutions on site selection factors. There maybe a more appropriate location for this kind of facility than has here before been considered and that the City would like to play a more active and cooperative role in that process. Community Solutions is in fact banking on the sincerity of that expression. We want to bring the City more directly into this process and hopefully in the course of doing that take into account some of the neighborhood concerns that have been expressed at Twin Lakes. It is our believe that no matter where this facility is proposed to be located, there is going to be neighborhood impact and there are going to be people who are not going to be happy about it. In some fashion a balance has to be struck between these legitimate neighborhood concerns and the federal law that provides that these kinds of services shall be provided in a community of our size.

Thus, Community Solutions is in agreement with the Appellants in this case that if we have 60 days in which to explore the matter much more aggressively with the City and see how real is the interest in resolving this matter in a cooperative way that we should be able to determine and answer a lot of these questions in ways that may not generate quite the concern from the neighborhoods affected. So we are in agreement with the Appellant that a 60-day deferral is appropriate and we hope that you approve that on the basis that we are taking a run at a much larger type of approach to this whole question. I am available to answer any question that you may have.

PITTS: Thank you Mr. Docking. Are there any questions from the bench?

RUANE: At this late date is there still some potential for the State Legislature to weigh in on this issue and provide some additional guidance?

DOCKING: The answer I believe is, yes, but I am not familiar enough with the Legislative process. Elizabeth, are you prepared to say one way or the other? I was informed that there was a bill that would prohibit municipalities from interfering in the site selection process for this program. I have also been told that there was a bill that would cut off funding for this program. In other words, I have been told that there is either extreme out there and I don't know what the status of those bills are and I frankly don't even know how that description is.

ROSALIE BRADLEY SPEAKING FROM THE AUDIENCE: The status of the second one that you brought up is down that no funding unless there was local input is not in the ..unless it comes up of course they go back tomorrow.

DOCKING: The veto section starts pretty quick here and they are worried about bigger fish right now with the budget.

ROSALIE BRADLEY STILL SPEAKING FROM THE AUDIENCE: As of last weekend I was advised that the original one that you referred to doing away with any City input was still in the works now what that means is something else.

DOCKING: If I can offer by way of context there are three locations, one in Wichita, one in Topeka and one in Kansas, City Kansas. To my knowledge in Topeka there has been very little public outcry over the facility. The location has been picked and their door are not open yet but they have had very little of what we have witnessed down here.

On the other extreme in Wyandotte County I believe today is when they are holding a hearing on Community Solutions application for a temporary restraining order against the Unified Government because they are refusing to grant a building permit there for a facility that they contend meets the requirements of the law. So, you have kind of two extremes out there in Wyandotte County, big surprise, it is all screwed up, and what we are trying to do now is to avoid that kind of result. The City has said that they want to work with us and believe me we want to work with the City and we think that everybody is going to be happier with the result if we are able to pull that off.

PITTS: Thank you. Is there any other persons from the Appellants group to address the issues germane to this case? Mr. Schroeder, do you need to make a statement? I wasn't trying to cut anyone else off were you ready speak Mr. Ramsey?

RAMSEY: I just want to make one thing certain that if this matter is not continued we have an argument to make in regards to the Appellants' position that I am hopeful that we won't have to make it. It is my understanding that if this matter is continued the building permit will be withdrawn and the issues pertaining to or the possibility of this being placed in Twin Lakes will be irrevocably, and I am using their terms, withdrawn no longer considered and that the issues that remain would be those legal issues that surround the report that the Zoning Administrator has made. I am not going to go into those but I hate to get involved if we don't have to.

PITTS: Will I think that may have been the reason for the request for a 60-day deferment rather than for us to take any other action, Thank You. Are there others to speak? Mr. Schroeder you may approach please.

KURT SCHROEDER SUPERINTENDENT OF THE OFFICE OF CENTRAL INSPECTION AND ZONING ADMINISTRATOR FOR THE CITY OF WICHITA: I too am prepared to make an argument if you want to hear that on my side of the issue. However, my Legal Counsel here has informed me that if the applicant for the building permit that was submitted, is agreeable to withdraw that building permit application, void that permit application, that also at this time could withdraw the interpretation specific to that particular permit application at this time, and we could defer this or hear it at another time if we can do that I will be prepared to that as well.

PITTS: I don't think that this bench is going to be prepared to make a decision on granting or denying a request for deferment based on some other action that is being taking place. But that is something that we will have to discuss so that it can't be a conditional based on some subsequent action to be provided.

DICKGRAFE: I think that the request has been made that the entire case be deferred 60-days. If the actions that are anticipated happen, then at that point my understanding is that this case would not even come back to this Board it would be moot there would be no building permit, there would be no interpretation. If those actions in fact do not happen, the posture of the parties has not changed, and at that point this Board would certainly have the full authority to hear the arguments of both sides, look at the legal issues and determine whether not Mr. Schroeder's interpretation was correct. So, I don't think that this is a request for a conditional deferment.

PITTS: Thank you. Any other persons in the audience have reasons to address any issues germane to this particular case? If not we will restrict any of the action to the Board. Are we prepared for a motion? You have any comments, Randy?

RUANE moves ROGERS seconds that the item be deferred for 60-days.

MOTION carries 5-0.

PITTS: Bickley Foster did you have something to say?

FOSTER: Just to be sure that you are talking about the June meeting right? Not just 60-days I am just clarifying that. Two months I am not sure that 60-days is the June meeting.

PITTS: Rather than 60-days it will be the meeting that occurs the month after next and I think that is clear. Reports from Central Inspection regarding compliance with requirements of various cases, J.R. Cox.

COX: No sir, I do not have a report.

PITTS: Is there any new business to come before the Board?

Meeting adjourned 2 p.m.